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Attorneys for Defendant
AMERICAN AIRLINES, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

EDWARD E. ANDERSON,
Plaintiff,

v.

AMR The parent of AMERICAN
AIRLINES INC, AMERICAN AIRLINES,
and DOES 1 through 5 INCLUSIVE,

Defendants.

Case No. 07-cv-3527 WHA

**DEFENDANT AMERICAN AIRLINES,
INC.'S OBJECTIONS TO PLAINTIFF'S
EVIDENCE IN OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT AND/OR
SUMMARY ADJUDICATION OF CLAIMS
AND/OR JUDGMENT ON THE
PLEADINGS**

Date: June 5, 2008
Time: 8:00 p.m.
Courtroom: 9
Judge: William Alsup

Defendant hereby objects to the following matters relied on as part of Plaintiff's
opposition to American's motion.

- 1 1. Defendant objects to any and all papers and pleadings filed by Plaintiff in
2 opposition to the pending motion as being untimely filed in violation of
3 Local Rule 7-3;
- 4 2. Defendant objects to all supporting papers and exhibits filed by plaintiff
5 and not faxed to the undersigned counsel until Tuesday May 20, 2008 as
6 untimely in violation of Local Rule 7-3.
- 7 3. Defendant objects to those portions of the declaration of Frederick C.
8 Roesti which are hearsay, and not based on personal knowledge, to wit,
9 Roesti Dec. ¶¶ 9, 10. Said paragraphs are not based on personal
10 knowledge, rely on hearsay, and refer to unauthenticated and inadmissible
11 documents, and are argumentative. Affidavits containing hearsay
12 (including reference to statements by others) fail Rule 56(e)(1) standards.
13 “(H)earsay evidence in Rule 56 affidavits is entitled to no weight.”
14 *Scosche Industries, Inc. v. Visor Gear Inc.*, 121 F.3d 675, 681 (9th Cir.
15 1997) (internal quotes omitted). Declarations by attorneys are sufficient
16 only if the facts stated are matters of which the attorney has knowledge—
17 e.g., matters occurring during the course of the lawsuit, such as
18 authenticity of a deposition transcript. Attorney affidavits made on
19 information and belief do not satisfy the summary judgment procedural
20 requirements. *Rountree v. Fairfax County School Bd.*, 933 F.2d 219, 223
21 (4th Cir. 1991);
- 22 4. Defendant objects to all pages and all documents attached to the Roesti
23 declaration as Exhibit 2. Such documents are alleged statements given by
24 G2 skycaps to Plaintiff or his lawyer. (Roesti Dec., ¶¶ 9, 10.) These
25 documents lack foundation, authentication, and are hearsay. Declarations
26 or affidavits submitted in conjunction with a summary judgment motion
27 must: (1) be made on personal knowledge; (2) set forth facts that would be
28 admissible in evidence (i.e., no inadmissible hearsay or opinions); and (3)

show the affiant is competent to testify to the matters stated. Fed. R. Civ. P. 56(e)(1). A “hearsay assertion that would not be admissible if testified to at trial is not competent material for a Rule 56 affidavit.” *Sarno v. Douglas Elliman–Gibbons & Ives, Inc.*, 183 F.3d 155, 160 (2nd Cir. 1999) (internal quotes omitted); *Hurd v. Williams*, 755 F.2d 306, 308 (3rd Cir. 1985) (inadmissible lay opinion not considered). Affidavits containing hearsay (statements by others) generally fail Rule 56(e)(1) standards, above: “(H)earsay evidence in Rule 56 affidavits is entitled to no weight.” *Scosche Industries, Inc. v. Visor Gear Inc.*, 121 F.3d 675, 681 (9th Cir. 1997) (internal quotes omitted). A proper foundation must be established for documents used to support or oppose summary judgment motions. Personal knowledge: A party offering documentary evidence may establish its foundation by attaching an affidavit by a custodian of records or anyone qualified to speak from personal knowledge that the documents are what they purport to be (e.g., business records). *Thanongsinh v. Board of Ed.*, 462 F.3d 762, 777 (7th Cir. 2006); *Orr v. Bank of America, NT & SA*, 285 F.3d 764, 778 (9th Cir. 2002). Hear, the documents attached as Exhibit 2 to the Roesti declaration are unsworn, unauthenticated, and contain hearsay and improper conclusions.

Dated: May 23, 2008

/s/ Kenneth R. O'Brien
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 Attorneys for Defendants
 AMR THE PARENT OF AMERICAN
 AIRLINES INC AND AMERICAN
 AIRLINES